Thai Legal Studies (2022) Vol. 2 No. 2 | 346–349
https://doi.org/10.54157/tls.262627

Book Review

Constitutional Bricolage: Thailand's Sacred Monarchy vs. The Rule of Law

Eugénie Mérieau
Bloomsbury Publishing (2021)
352 pp., ISBN-13: 9781509927692

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In this book, Eugénie Mérieau employs the metaphor "constitutional bricolage" to characterise the syncretism of the Thai constitutional system with regard to the Thai monarchy. In this context, the bricolage methodology illustrates the process of gathering, importing, and localizing constitutional formants and irritants into a fresh style of coherent order. The central argument is that the process of constitutional bricolage results in the "indigenisation" of the concepts of constitutional monarchy and the rule of law: the monarch posits supremacy and reserve power over the constitutional order. The methodology of bricolage enables a contextual analysis of the Thai constitutional system in relation to the interplay between law, politics, history, and culture.

The book is divided into three main sections that are further broken down into texts, doctrinal ideas, and constitutional practices. The first part focuses on the early development of Thai constitutionalism from the period of high imperialism to the end of absolute monarchy in Siam. It shows how Hindu–Buddhist theories of kingship encountered and interacted with the concepts of constitutionalism and the rule of law, giving rise to the new constitutional character of the modern Thai monarchy. The second part deals with the interrelation between Buddhist righteous kingship and authoritarian regimes in cases of coup d'état and states of emergency. The final section discusses the emergence of juristocracy and constitutional courts in a process through which the global discourse of good governance was customized to fit in with the local concept of righteous kingship. Overall, the idea of Buddhist kingship appears to be a socio-cultural framework for negotiating Western doctrines and rules used for

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practical purposes within the pluralistic constitutional ecosystem of modern Siam/Thailand. As a consequence, most subsequent fundamental constitutional developments are founded upon such framework.

The book's first contribution is its rendering of the alternative legal modernisation process. Thanks to the underlying modernisation theory, sets of binary opposites (formal/constitutional/modern/successful and informal/conventional/pre-modern/unsuccessful) have been used as common denominators to assess constitutional systems throughout the world. As a consequence, the British system, due to its alleged limited use of the monarch's reserve power, has come to be seen as the epitome of constitutional monarchy and is regarded as 'more modern' than the Thai system. Apart from the issue of constitutional monarchy, the justification of being 'more developmental' also leads legal scholars in general to deploy a functionalistic approach, comparing the Thai legal system to the prototypical European legal traditions regardless of contextual analysis.[1] Regarding this, the author's significant contribution is to emphasise that although informal/non-codified conventions are present in both the British and Thai constitutions, they developed within different historical contexts.[2] Therefore, appropriating the British conventions as a fixed prototype would be to miscomprehend the contingent nature of conventions relating to the monarchy. Mérieau, however, successfully employs bricolage, which combines contextual factors rather than disassociating the problem into cultural, political, legal, or even non-legal issues, to reevaluate and render the character of the Thai constitutional monarchy and the rule of law based on Buddhist theories of kingship and law. The work poses a critique to modernisation or secularisation theories as well as to the master narrative of comparative law, which viewed the Thai constitutional system as being on the same road to political modernity like Europe, or as *not yet* having arrived there.[3]

Secondly, the book illustrates the local attempts to find compatibility between the elective theory of kingship and the Western conceptions of sovereignty, utilitarianism, and constitutionalism, in response to international and domestic consumption.[4] Interestingly, the first part of the book shows the royalist elites' primary concerns regarding the constitution, such as royal succession, the royal role of law-

[1] For investigations on the Thai legal scholarship's fetishism for the functionalistic approach and modernisation theory, see Paul Du Plessis and Kongsatja Suwanapech, "Law and Identity: The Case of the 'Common Law' of Scotland with Comparative Insights from Thailand" (2021) 1 Thai Legal Studies 47 <https://doi.org/10.54157/tls.246988>; Suprawee Asanasak, "A Transplanting Regular Impact Assessment in Thailand: A Curious Case of Perfunctory Effect and The Legal Culture of Method" (Asian Law Junior Faculty Workshop, Singapore, January 2021).

[2] Page 13 of the book.

[3] See Dipesh Chakrabaty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (2nd edn, Princeton University Press 2007) <https://doi.org/10.1515/9781400828654>.

[4] A comparable argument is made through the story of how the idea of modern kingship evolved. See Kongsatja Suwanapech, "The History of the Initial Royal Command: A Reflection on the Legal and Political Contexts of Kingship and the Modern State in Siam" in Andrew J. Harding and Munin Pongsapan (eds), *Thai Legal History: From Traditional to Modern Law* (Cambridge University Press 2021) <https://doi.org/10.1017/9781108914369>.

givers, the guardian of justice (ยุติธรรม; *Yutti-Dham*), and the deification of kingship. In my opinion, this reflects how the Buddhist socio-cultural imagination mirrors the priorities of the constitutional blueprint of the Thai modern absolutist state. Yet, even though the author makes a case for the continued existence of post-1932 constitutional innovations like the senate, royal veto, emergency provisions, and the privy council, bricolage as a whole picture would have been more vivid had continuity been shown through interweaving pre-1932 ideologies with post-1932 ideologies. Despite this point, the author handled the issue impressively when she discussed the revivals of Thai constitutional customs, royal octroy, and *Ratchaprachasamasai* as the transformation of the great elected. To build upon that, it seems that the elements of continuity suggested by the author—innovation and syncretic consolidation—are two sides of the same coin; or as Harding suggests, relate to the culture of legal consolidation rather than reformation in Siamese legal tradition.[5] Had the book focused more on how these developments systematically indicate the enduring components of Thai constitutional culture, the continuing constitutional rationales that underpin later techniques, mechanisms, institutions, and Constitutions, the discourse would have been more vivid and clear. The elective theory of kingship, for instance, may have served as the foundation for the privy council, the senate, constitutional court, and provisions for a state of emergency, which appear to reflect a distrust in participatory democracy as well as concern over national security. The concept generates socio-cultural sensibilities of righteously insightful rulers as opposed to mundane humans with evil intent. It is evident that some cultural constitutions have not changed despite innovations in several written constitutions; in fact, the innovations themselves were ripple effects of sensibilities.

Thirdly, the book points out the interrelation between the righteousness of kingship and positive law. Chapter 6, in particular, depicts the tension between legal positivism and the royalist historical school, which at the same time represents the conflicts between legal positivism and natural and historical traditionalism. Eventually, natural and historical traditionalism prevail, leading to a fusion of the British constitutional monarchy, the elective theory of kingship, and revolutionary legality, to justify the extraconstitutional power of the monarchy and coups d'état. In this regard, the book addresses *how* the idea of legal positivism can reconcile with the metaphysical *Dhamma* order, but it also begs the question of *why*. Specifically, although Chapter 7 aims to describe the hybrid practices based on revolutionary legality and royal octroy, it does not offer arguments for why these might ontologically coexist. My observation is that the author's critique of the secularisation thesis may lie at the heart of the answer. Consequently, the position of legal science in relation to natural law may have been impacted by the way *Dhamma* was rationalised during the transition to modernity. In this way, positive law as part of natural science (วิทยาศาสตร์ธรรมชาติ; *wittayasart dhammachart*) has become an imperfect

[5] Andrew J. Harding, "Comparative Law and Legal Transplantation in South East Asia: Making Sense of the 'Nomic Din,' " in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart Publishing 2001) 207.

representation of *Dhamma* as a result of the intellectual strategy of dividing the temporal and transcendental spheres.[6] In other words, legal science serves to represent the superior truth of *Dhamma* rather than being divorced from religious authority.[7] As a result, according to Buddhist epistemology, any science that is thought of as temporal knowledge cannot be liberated from the absolute truth of *Dhamma*.

Lastly, in Chapter 8, according to the author, mechanisms for punishing political misconduct included the indigenisation of foreign models such as criminal sanction by the supreme court, impeachment by the senate, and the abolition of political parties by the constitutional court.[8] Specific foreign origins which have been indigenised are discussed in the book. However, if the author had connected these mechanisms with arguments presented in other chapters, her argument regarding how bricolage fits into the local framework would have been more solid. Furthermore, if the nuances between the foreign and local models were more thoroughly discussed, this might have helped to explain how the local actors came to understand facts and norms in a different way than was the case in foreign models. While the division of the content into texts, doctrinal concepts, and constitutional practices appears systematic, integrating all of these into an overview would have given them more weight.

In conclusion: "Constitutional Bricolage" offers a comprehensive understanding of Thai constitutional history through contextual legal studies. Legal doctrines are vividly put into context through the framework of bricolage. Legal scholars are engaged to think beyond functional and Eurocentric approaches. The book has also succeeded in overcoming the dichotomy between the civil and common legal traditions in which Thai scholars have been deeply entrenched for decades. Thanks to constitutional bricolage, the Thai legal system now reflects a pluralistic imagination—a shift that has been long overdue.

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[6] See ทวีศักดิ์ เผือกสม หยดเลือด จารึก และแท่นพิมพ์: ว่าด้วยความรู้/ความจริงของชนชั้นนำสยาม พ.ศ. 2325–2411 [Taweesak Pueksom, *Blood Drop, Manuscript, and Printing Press: The Management of Knowledge and Truth of the Siamese Elites* (Illumination Editions 2018)] (Thai); ธงชัย วินิจจะกูล, เมื่อสยามพลิกผัน: ว่าด้วยกรอบมโนทัศน์พื้นฐานของสยามยุคสมัยใหม่ [Thongchai Winichakul, *Siam at a Turning Point: On the Foundational Mentality of Modern Siam* (Samesky Books 2019)] (Thai), chapter "การแก้ต่างให้พุทธศาสนากับความเป็นมาของศาสนาเปรียบเทียบในสยาม" ["A Defense for Buddhism and the Origin of Comparative Religion in Siam"].

[7] ธงชัย วินิจจะกูล, ยุคสมัยอย่างใหม่ในพระราชพิธีสิบสองเดือน [Thongchai Winichakul, "The Consciousness of Modernity in Royal Ceremonies of the Twelve Months"] in คงสัจจา สุวรรณเพ็ชร, ยุคสมัยอย่างใหม่ในพระราชพิธีสิบสองเดือน [Kongsatja Suwanapech (ed), *Sense of Modernity in Royal Ceremonies of the Twelve Months* (Illumination Editions, forthcoming)] (Thai).

[8] Pages 184–87 of the book.